

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 20, 2003

IN RE:

PETITION FOR ARBITRATION OF)
ITC^ DELTACOM COMMUNICATIONS, INC.)
WITH BELL SOUTH TELECOMMUNICATIONS, INC.)

DOCKET NO.
03-00119

INITIAL ORDER REGARDING BELL SOUTH'S MOTION TO REMOVE ISSUES AND
OTHER PRE-HEARING PROCEDURAL ISSUES.

On July 2, 2003, BellSouth Telecommunications, Inc. ("BellSouth") filed a *Motion to Remove Issues from ITC^DeltaCom Communications, Inc.'s Petition for Arbitration*. On July 16, 2003, ITC^DeltaCom ("DeltaCom") submitted its response to the motion. This order offers the pre-arbitration officer's ruling on this motion and also discusses other procedural matters relevant to the hearing scheduled for August 27, 28 and 29, 2003,

BellSouth's Motion to Remove Issues

BellSouth's motion proposes to remove four issues – Nos. 6, 9, 66 and 67 – from the arbitration. Since that time, however, the parties have resolved Issue No. 6 so that part of the motion is now moot. The remaining three issues are discussed below:

Issue 9 – Should BellSouth be required to provide interfaces for OSS to DeltaCom which have functions equal to that provided by BellSouth to BellSouth's retail division?

BellSouth contends that the Authority has already ruled in Docket 97-00309 that BellSouth is providing nondiscriminatory access to Operation Support Systems (OSS) and that

specific language pertaining to access OSS interfaces is not necessary.¹ DeltaCom counters that the issue relates to BellSouth's continuing obligation to provide nondiscriminatory OSS access and that the decision in 97-00309 was for a point-in-time.²

Although the issue is broadly stated and the remedies sought by DeltaCom do not specify the OSS interfaces being sought by DeltaCom, DeltaCom has proposed specific language pertaining to OSS parity for the interconnection agreement that it requests the arbitration panel consider.³ Such interconnection language is appropriate for inclusion in an arbitration conducted under pursuant to Section 252 of Federal Telecommunications Act of 1996.⁴ Both the Authority and the Federal Communications Commission ("FCC") have ruled that access to OSS is an unbundled network element that incumbent local exchange carriers are required to offer pursuant to Section 251 of the aforementioned 1996 Act.⁵ Therefore, the pre-arbitration officer finds that Issue # 9 shall remain in the docket.

Issue 66 – Testing of End-User Data. Should BellSouth provide testing of DeltaCom end-user data to the same extent BellSouth does such testing of its own end-user data?

Issue 67 – Availability of OSS Systems. May BellSouth shut down OSS Systems during normal working hours / 8 am to 5 pm without notice or consent from DeltaCom?

BellSouth contends that Issues 66 and 67 are regional issues impacting all CLECs that are most appropriately addressed through the Change Control Process (CCP) and that it is not appropriate to address such issues in arbitration limited to a single CLEC. DeltaCom responds

¹ BellSouth Motion to Remove Issues from ITC^DeltaCom's Petition for Arbitration, page 3.

² ITC^DeltaCom response, page 4.

³ Petition, Attachment 6, Section 3.2.

⁴ 47 U.S.C §252.

⁵ See TRA Docket 97-00309, *BellSouth Telecommunications, Inc. Entry into Long Distance (interLATA) Service Pursuant to Section 271 of the Telecommunications Act of 1996* and 47 U.S.C §251(c)(3).

that the CCP is “not the sole forum for addressing OSS issues,” and BellSouth is simply frustrated with “arbitration process provided for by Congress in the Act.”⁶

The pre-arbitration officer finds that Issues 66 and 67 should remain part of this arbitration proceeding. It would be inappropriate to remove these issues without the opportunity by both parties to litigate the pros and cons of DeltaCom's requests pertaining to OSS. Issues 66 and 67 are clearly interconnection issues subject to arbitration under Section 251 and 252 of the 1996 Telecommunications Act.⁷ Also, issues pertaining to the CCP have been included in previous arbitrations before the Authority.⁸

Hearing Related Procedural Issues

According to the Joint Matrix filed on August 15, 2003, twenty-two (22) issues have not been resolved and, therefore, will be litigated at the hearing beginning August 27, 2003. These unresolved issues are: Issue nos. 1 a) and b), 2 a), b) and c), 9, 11 a) and b), 21, 25, 26 a), b), c) and d), 36 a) and b), 37, 44, 46, 47, 56 a) and b), 57 a) and b), 58 a) and b), 59, 60 a) and b), 62, 63, 64, 66, and 67.

To conduct the hearing in an expeditious and efficient manner within the three days set aside for this hearing, the pre-arbitration officer requests that:

- Opening arguments be limited to 5 minutes per party. No closing arguments.
- Cross-examination should be concise and limited only to outstanding issues. Also, cross-examination questions should include a reference to the specific issue being addressed.
- Witnesses should attempt to answer cross-examination question beginning with a “yes” or “no” response and then go on to explain such answer in a concise manner.

⁶ DeltaCom response, page 6.

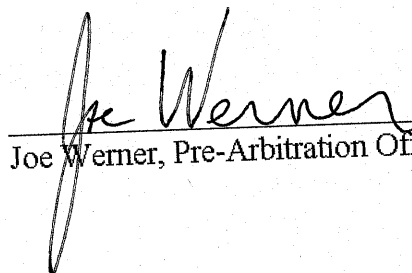
⁷ 47 U.S.C. §§ 251 and 252.

⁸ See TRA Dockets 00-00079, *In the matter of the Interconnection Agreement Negotiations between AT&T Communications of the South Central States, Inc., TCG Midsouth, Inc. and BellSouth Telecommunications, Inc. pursuant to 47 U.S.C. § 252.*

- Absent objection by either party, Authority Staff will be permitted to ask clarifying questions to witnesses.

IT IS THEREFORE ORDERED THAT:

1. *BellSouth Telecommunications, Inc.'s Motion to Remove Issues from ITC^DeltaCom Communications, Inc.'s Petition for Arbitration* is denied.
2. Any objections to this report shall be filed with the Authority no later than **noon** on **Monday, August 25, 2003**. Any objections will be addressed by the arbitration panel at the hearing.


Joe Werner, Pre-Arbitration Officer